



DEPARTMENT OF THE NAVY
COMMANDING OFFICER
NAS PENSACOLA
190 RADFORD BLVD
PENSACOLA, FLORIDA 32508-5217

AO
IN REPLY REFER TO

NASPNCLAINST 12630.4A
Code OOF60

24 MAR 1997

NASPNCLA INSTRUCTION 12630.4A

Subj: FAMILY AND MEDICAL LEAVE POLICY

Encl: (1) HROPNCLAINST 12630.2A

1. Purpose. To issue policy and guidance concerning subject policy for civilian personnel assigned to Naval Air Station Pensacola.
2. Cancellation. NASPNCLAINST 12630.4
3. Information. The Human Resources Office is responsible for providing guidance in civilian personnel procedures for the Pensacola area complex. For the purpose of standardization and to decrease the number of separate command directives, NAS Pensacola will adopt and utilize certain HRO directives pertaining to civilian personnel management.
4. Action. Department Heads and Special Assistants will comply with the procedures established in enclosure (1).

Distribution:

A
(NASPNCLAINST 5216.1R)

Stocked:
Commanding Officer
NAS Pensacola
190 Radford Blvd
Pensacola, FL 32508-5217

J. M. DENKLER



DEPARTMENT OF THE NAVY

HUMAN RESOURCES OFFICE
368 SOUTH AVENUE
PENSACOLA FLORIDA 32508-5124

IN REPLY REFER TO:

HROPNCLAINST 12630.2A
Code 0922

21 FEB 1997

HROPNCLA INSTRUCTION 12630.2A

Subj: FAMILY AND MEDICAL LEAVE

Ref: (a) Public Law 103-3, the Family and Medical Leave Act (FMLA)
(b) 5 CFR Part 630
(c) 5 CFR 630.401
(d) 5 CFR 890.502
(e) HROPNCLANOTE 12890 of 12 Nov 96

Encl: (1) Your Rights Under FMLA Fact Sheet
(2) Federal Employee Entitlements Fact Sheet
(3) Certification of Physician or Practitioner

1. Purpose. To set forth the regulations and procedures to be followed in granting leave to civilian personnel at the activity pursuant to the Family and Medical Leave Act (FMLA).

2. Cancellation. Cancels HROPNCLAINST 12630.2

3. Policy. Per references (a) and (b), eligible federal employees will be provided up to 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs. This instruction will be used in conjunction with applicable law, regulation, and collective bargaining agreements. Governing regulations, contained in subpart L of reference (b), are issued by the Office of Personnel Management (OPM) and should be consulted for further guidance.

4. Applicability. This instruction applies to most permanent employees of the federal government, including employees paid from nonappropriated funds, who have completed at least 12 months of service (which need not be recent or consecutive months). It does not apply to part-time employees, intermittent employees or temporary employees serving under a temporary appointment with a time limitation of one (1) year or less ("Title I employees"), since such employees are covered by different regulations. Enclosure (1) applies to Title I employees, and must be posted in conspicuous place where such personnel are employed. Consult the cognizant Personnel Specialist for further guidance on Title I employees.

5. Leave Entitlement

a. An employee is entitled to a total of 12 administrative workweeks of unpaid leave ("FMLA leave") during any 12-month period for one or more of the following reasons:

- (1) The birth of a child of the employee and the care of the newborn.
- (2) The placement of a child with the employee for adoption or foster care.
- (3) The care of a spouse, son, daughter or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition.
- (4) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

b. Except as provided in paragraph 5c below, the 12-month period referred to in paragraph 5a begins on the date an employee first takes FMLA leave and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of FMLA leave. (This may include a continuation of a previous situation or circumstance.)

c. The entitlement to a total of 12 administrative workweeks of leave under paragraphs 5a(1) and (2) of this section will:

- (1) Begin prior to or on the actual date of birth or placement for adoption or foster care.
- (2) Expire 12 months after the date of birth or placement.

Leave for birth or placement must be concluded within 12 months after the date of birth or placement.

d. When an employee requests FMLA leave, the activity will provide guidance concerning the employee's rights and obligations, as contained in enclosure (2).

e. FMLA leave may not be subtracted from the employee's entitlement to such leave unless the employee confirms for management that he/she is invoking the entitlement to it. An employee's written notice of his/her intent to take FMLA leave in accordance with paragraph 8 of this instruction suffices as the employee's confirmation.

6. Intermittent Leave or Reduced Schedule

a. Leave taken under paragraph 5a(1) or (2) will not be taken intermittently or on a reduced leave schedule unless the employee and management agree. To obtain approval for such leave the employee will submit a written request to his/her immediate supervisor. The supervisor will forward the request, with recommendation to approve or disapprove, to the second level supervisor, who will make the final decision.

b. FMLA leave taken under paragraph 5a(3) or (4) may be taken intermittently or on a reduced leave schedule only when medically necessary, subject to the notice and certification requirements contained in paragraphs 8 and 9 of this instruction. To obtain approval for such leave, the employee will timely submit a written request, along with medical certification, to his/her immediate supervisor. The supervisor will forward the submission, with recommendation to approve or disapprove, to the second level supervisor, who will make the final decision. If the second level supervisor doubts the validity of the certification, the procedures in paragraph 9b of this instruction apply.

c. If an employee takes leave under paragraph 5a(3) or (4) intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the activity may place the employee temporarily in an available alternative position for which the employee is qualified and can better accommodate recurring periods of leave. The employee's second level supervisor will determine whether an available alternative position will be used, and whether it meets the criteria set forth in section 630.1204(d) of reference (b).

7. Substitution of Paid Leave

a. An employee may elect to substitute the following paid leave for any or all of the period of FMLA leave taken:

(1) Accrued or accumulated annual or sick leave consistent with current law and regulations governing the granting and use of annual or sick leave; i.e., sick leave may be substituted for unpaid FMLA leave consistent with the new expanded uses of sick leave in addition to the employee's own illness in accordance with reference (c).

(2) Advanced annual or sick leave approved under the same terms and conditions that apply to any other employee who requests annual or sick leave.

(3) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program consistent with subparts I and J of reference (b).

b. The employee must notify the activity of his/her intent to substitute paid leave for the period of FMLA leave to be taken prior to the date such paid leave commences. The employee may not retroactively substitute paid leave for leave without pay (LWOP) under FMLA.

8. Notice of Leave

a. If the need for FMLA leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee will provide notice of his/her intention to take such leave not less than 30 days before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin in less than 30 days, the employee will provide notice as soon as practicable after learning of the need for it. Such notice will be submitted to the employee's immediate supervisor, and must:

(1) Be signed and dated by the employee.

(2) Specify the period of the FMLA leave.

(3) Indicate whether the employee elects unpaid leave or wishes to substitute paid leave for all or part of the period.

b. If FMLA leave taken under paragraph 5a(3) or (4) is foreseeable based on planned medical treatment, the employee will consult with his/her supervisor and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of the activity, subject to the approval of the health care provider. The supervisor may, for justifiable cause, request that an employee reschedule medical treatment, subject to the approval of the health care provider.

c. If the need for FMLA leave is not foreseeable, e.g., a medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide 30 days notice of his/her need for leave, the employee will provide notice as soon as practicable. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible party). A personal representative must be designated in writing by the employee.

9. Medical Certification

a. An employee requesting FMLA leave under paragraph 5a(3) or (4) of this instruction must support the request by written medical certification issued by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee, as provided by enclosure (3).

b. If the employee's second level supervisor doubts the validity of the employee's medical certification, the second level supervisor may require, at the activity's expense, that the employee obtain the opinion of a second health care provider designated or approved by the second level supervisor. If the opinion of the second health care provider differs from the original certification, the second level supervisor may require, at the activity's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the second level supervisor and the employee.

(1) The opinion of the third health care provider will be binding on both parties.

(2) Health care providers may not be activity employees or be under Department of Defense administrative oversight on a regular basis except in areas where access to health care is extremely limited.

c. While an employee is on FMLA leave, the second level supervisor may periodically require, at the activity's expense, subsequent medical recertification from the health care provider, not more often than every 30 calendar days. However, the second level supervisor may require subsequent medical recertification more frequently than every 30 calendar days if:

(1) The employee requests that the original leave period be extended.

(2) The circumstances described in the original medical certification have changed significantly.

(3) The second level supervisor receives information that casts doubt upon the continuing validity of the medical certification.

d. Activities may establish a uniformly applied practice or policy that requires all similarly-situated employees (i.e., same occupation, same serious health condition) to obtain written medical certification from his/her health care provider that he/she is able to perform the essential functions of his/her position as a condition for returning the employee to work. Activities may delay returning the employee to work until medical certification is provided. The same conditions for verifying the adequacy of a medical certification as in enclosure (3) shall apply to the return to work medical certification. Activities may not require a second or third opinion. Medical certification for return to work may not be required during periods of intermittent or reduced leave.

e. If medical certification is required prior to an employee returning to work, the activity shall notify the employee before leave commences, or to the extent practicable in emergency medical situations, and pay the expenses for obtaining the written medical certification. An

employee's refusal or failure to provide written medical certification under paragraph 9d may be grounds for appropriate disciplinary or adverse action, as provided in CPI 752.

10. Protection of Employment and Benefits. Any employee who takes FMLA leave is entitled, upon return to work, to be returned to:

a. The same position held by the employee when the leave commenced, or

b. A position with equivalent opportunity for a within-grade increase, performance award, incentive award, or other similar discretionary and non-discretionary payments consistent with applicable laws and regulations; however, the entitlement to be returned to an equivalent position does not extend to intangible or unmeasurable aspects of the job. The employee's second level supervisor will determine whether an employee returning from leave will be returned to an equivalent position instead of his/her permanent position. As soon as practicable after a decision has been made to return the employee to an equivalent position, the employee shall be notified in writing.

11. Health Benefits. An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program who takes LWOP per this instruction may continue his/her health benefits enrollment while on LWOP and arrange to pay the appropriate employee contributions into the Employees Health Benefits Fund. The employee will make such contributions consistent with reference (d) and (e).

12. Records and Reports

a. Second level supervisors will maintain for three years the following information concerning each employee who takes FMLA leave:

(1) The employee's rate of basic pay.

(2) The occupational series for the employee's position.

(3) The number of hours of FMLA leave taken including any paid leave substituted for LWOP.

(4) Whether FMLA leave was taken as follows:

(a) Under paragraph 5a(1), (2) or (3).

(b) Under paragraph 5a(4) of this instruction.

b. When an employee transfers to a different activity or agency, the second level supervisor will ensure that the following information is provided to the gaining activity or agency:

(1) The beginning and ending dates of the employee's 12-month period, as determined under paragraph 5c.

(2) The number of hours of FMLA leave taken, as determined under paragraph 5c.

13. Employees who believe management has not fully complied with reference (a) of this instruction may file grievances under the activity's administrative grievance procedure or the negotiated grievance procedure, or use any other procedure that may be available to them.

14. Activities serviced by the Human Resources Office (HRO) Pensacola are encouraged to adopt this instruction for their use.



J. B. FOSTER

Distribution (NASPNCLAINST 5216.1Q):

C D G I K

HRO (Code 092)	(25)
HRO (Code 096), Memphis	(05)
HRO (Code 097), Meridian	(05)
HRO (Code 098), Great Lakes	(05)
HRO (Code 099), South Texas	(05)
HRO (Code 09A24)	(75)

YOUR RIGHTS under the FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- ▶ to care for the employee's child after birth, or placement for adoption or foster care;
- ▶ to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- ▶ for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- ▶ The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- ▶ An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- ▶ For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- ▶ Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- ▶ The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- ▶ interfere with, restrain, or deny the exercise of any right provided under FMLA;
- ▶ discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- ▶ The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- ▶ An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

U.S. Department of Labor, Employment Standards Administration
Wage and Hour Division, Washington, D.C. 20210

WHD Publication 1423
June 1993

[FR Doc. 93-13028 Filed 6-3-93; 8:45 am]

ENCLOSURE (/)

FEDERAL EMPLOYEE ENTITLEMENTS under the FAMILY AND MEDICAL LEAVE ACT OF 1993 (effective August 5, 1993)

ENTITLEMENT

Sections 6381 through 6387 of title 5, United States Code, as added by Title II of the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103-3, February 5, 1993), provides covered Federal employees with entitlement to 12 workweeks of unpaid leave during any 12-month period for the following purposes:

- the birth of a son or daughter of the employee and the care of such son or daughter;
- the placement of a son or daughter with the employee for adoption or foster care;
- the care of a spouse, son, daughter, or parent of the employee who has a serious health condition; or
- a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

Under certain conditions, FMLA leave may be taken intermittently, or the employee may work under a work schedule that is reduced by the number of hours of leave taken as family and medical leave. An employee may elect to substitute other paid time off, as appropriate, for any unpaid leave under the FMLA. FMLA leave is in addition to other paid time off available to an employee.

JOB BENEFITS AND PROTECTION

- Upon return from FMLA leave, an employee must be returned to the same position or to an "equivalent position with equivalent benefits, pay status, and other terms and condition of employment."
- An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee may pay the employee share of the premiums on a current basis or pay upon return to work.

ADVANCE NOTICE AND MEDICAL CERTIFICATION

- The employee must provide notice of his or her intent to take family and medical leave not less than 30 days before leave is to begin or as soon as is practicable.
- An agency may request medical certification for FMLA leave taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee.

This is a brief summary of your entitlements and responsibilities under the FMLA. Contact your agency personnel office for additional information.

ENCLOSURE (2)

Certification of Physician
or Practitioner
(Family and Medical Leave Act of 1993)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

Employee's Name	2. Patient's Name (if other than employee)
-----------------	--

3. Diagnosis

4. Date condition commenced	5. Probable duration of condition
-----------------------------	-----------------------------------

6. Regimen of treatment to be prescribed (Indicate number of visits, general nature and duration of treatment, including referral to other provider of health services. Include schedule of visits or treatment, if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week.)

a. By Physician or Practitioner

b. By another provider of health services, if referred by Physician or Practitioner

If this certification relates to care for the employee's seriously-ill family member, skip Items 7, 8 and 9 and proceed to Items 13 thru 20 on reverse side. Otherwise, continue below.

Check Yes or No in the boxes below, as appropriate

7. Is inpatient hospitalization of the employee required? ☐ Yes ☐ No
8. Is employee able to perform work of any kind? (If "No", skip Item 9) ☐ Yes ☐ No
9. Is employee able to perform the functions of employee's position? (Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee) ☐ Yes ☐ No

10. Signature of Physician or Practitioner	11. Date	12. Type of Practice (Field of Specialization, if any)
--	----------	--

ENCLOSURE (3)

For certification relating to ci
17 below as they apply to the fa

the employee's seriously-ill family
member and proceed to item 20.

er, complete items 13 thru

13. Is inpatient hospitalization of the family member (patient) required?

☐ Yes ☐ No

14. Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs,
safety or transportation? ☐ Yes ☐ No

15. After review of the employee's signed statement (See Item 17 below), is the employee's presence
necessary or would it be beneficial for the care of the patient? (This may include psychological
comfort.) ☐ Yes ☐ No

16. Estimate the period of time care is needed or the employee's presence would be beneficial.

Item 17 is to be completed by the employee needing family leave

17. When Family Leave is needed to care for a seriously-ill family member, the employee shall state the care he or she
will provide and an estimate of the time period during which this care will be provided, including a schedule if
leave is to be taken intermittently or on a reduced leave schedule.

18. Employee Signature

19. Date

20. Signature of Physician or Practitioner

21. Date

22. Type of Practice (Field of Specialization, if any)